IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8835 OF 2005

Federation of Medical and Sales Representatives' Association of India ....Petitioner

Vs.

Wockhardt Limited And Anr. ....Respondents

Shri.Arshad Shaikh with Vinod Shetty & Ketaki Rege for the Petitioner.

Shri.J.P. Kama, Senior Advocate for the Respondents.

CORAM : P.V. KAKADE, J.

DATE : 17TH JANUARY, 2006

P.C.

1. Heard the learned counsel for the parties. Perused the record. The Petitioner workers have challenged the order dated 3rd September, 2005 passed by the Member, Industrial Court, Mumbai, whereby Revision Application (ULP) No.29 of 2005 was allowed and Labour Court's impugned order dated 14th December, 2004 came to be set-aside. The matter was directed to be sent back to the Trial Court and the Trial Court is directed to expedite the matter within three months from the date of receipt of record and proceedings.

2. It must be noted that in the course of hearing for admission, certain suggestions were given and on the basis of discussion with the learned counsel for the parties, following order is being passed :-

a. So far as the factual aspects are concerned, it is seen that set of complaints was filed on behalf of the workers by Federation of Medical and Sales Representatives Association of India against the Respondent- M/s. Wockhardt Limited and another in respect of committing unfair labour practice under the MRTU & PULP Act, 1971. In all these matters interim relief application was filed. Interim relief application was adjudicated by the Labour Court on the ground that the complainant had made out strong prima facie case and the balance of convenience tilted in favour of the complainant and as such when it was found that greater hardship would be caused, the interim relief was not granted to the applicant. All the applications can be allowed with direction that pending hearing and decision of the complaints, the Respondents would pay to each of the complainant 50% of the last drawn wages and dearness allowances towards subsistence allowance, which stood from the date of the filing of the complaint, till its final decision. It must be noted that with due compliance, some of the complainants have settled the dispute out of the Court and

therefore, they are not covered by the said order.

b. The present Respondents challenged the order in the Industrial Court and after hearing both parties the Industrial Court came to the conclusion that the Revision Application deserves to be allowed and the Labour Court's order came to be set-aside. The matter was sent back to the Labour Court with a direction that the Labour Court shall expedite the matter within three months. The present petition has been preferred by all the complainants against the said order by which the order of the Labour Court dated 14th December, 2004 came to be set-aside.

c. Now, it appears from the record that the Labour Court was of the view that the prima facie termination granted upon the conduct attaching stigma to the complainant and hence, disciplinary proceedings were necessary as condition precedent to infliction of termination as a measure of punishment especially when it was done and therefore, the order of termination is prima facie vitiated in law and therefore, was held unsustainable. The Industrial Court,

coming to the said observations on various grounds set- aside the said order holding that it was illegal and perverse and therefore, was required to be set-aside.

d. Both parties have taken me through the contents of the orders of the Courts below and at one stage without going into merits of the dispute, I was satisfied that instead of determining the present writ on merits, either after admitting or at the stage of admission, it would be in the interest of the both parties to send the matter remanding to the Labour Court, as directed by the Member, Industrial Court with direction to expedite the hearing and decide it on final merits. In view of this position and in the interest of both the parties, especially the workers involved, following direction is made :-

i. It is hereby directed that the matter be sent to the Labour Court, Mumbai, immediately for adjudication accordingly on merits, after giving opportunity to both the sides to put up their respective cases. I am informed that 26 complaints are remained to be adjudicated which would take time. For the purpose of expeditious

hearing, the President, Industrial Court, Mumbai is hereby directed to assign a Presiding Officer of Labour Court to adjudicate all the said complaints on day-to-day basis so as to finish the hearing, as early as possible and at any rate within four months from the date of this order. It is clarified that if it is not possible to assign any Presiding Officer for adjudicating of the complaint, then the President, Industrial Court shall assign the matters to the parent Court i.e. 5th Labour Court with directions to expedite the hearing on day-to-day basis of all the matters. In this regard both the parties are expected to co-operate with the hearing of the matter.

ii. It is further directed that the Respondent, in the mean time shall deposit the amount equivalent to 50% of the subsistence allowance of each of the complainant vide Exhibit - A for the period of two months, in the Trial Court, within four weeks from the date of this order. Before withdrawing such amount, the workers-complainants shall be required to furnish security to the satisfaction of the Labour Court to indemnify such amount, in case they do not succeed in the said complaint. With

these directions, the petition stands disposed of with no order as to costs. It is also clarified that if the hearing of the matter is delayed for one reason or the other, then the complainants shall be at liberty to move this Court for further directions pertaining to the financial aspects.